

City of New York v Siege Intl.

2025 NY Slip Op 33062(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 451898/2024

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

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INDEX NO. 451898/2024

THE CITY OF NEW YORK and THE NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES,

MOTION DATE 06/25/2025

MOTION SEQ. NO. 001

Plaintiffs,

- v -

SIEGE INTERNATIONAL, CANAM GROUP, formerly known
as SIEGE, and DAVID OSKIRKO,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18,
19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - DEFAULT

In this action for, inter alia, breach of contract, plaintiffs The City of New York (the City)
and The New York City Department of Citywide Administrative Services (DCAS) (together,
plaintiffs) move, pursuant to CPLR 3215, for entry of a default judgment against defendant Siege
International (Siege) for its failure to answer or appear in this action. The motion is granted.

Background

On April 3, 2020, the City, acting through DCAS, and Siege, a corporation with a principal
place of business in Lakewood, Colorado, entered into contract identified as purchase order no.
20205402341 (the Contract) for the sale of five million N95 respirator masks, at an individual unit
price of \$3.03, for a contract total of \$15.15 million (NY St Cts Elec Filing [NYSCEF] Doc No.
19, Ahlberg affirmation, exhibit D, ¶¶ 3 and 9). According to the Contract, “[p]ayment needs to
be 50% upfront to cover production runs and shipping. 1st shipment of 1 million masks to client
triggers final payment of remaining 50%” (NYSCEF Doc No. 16, Ahlberg affirmation, exhibit A

at 2). The Contract required Siege to complete its first shipment of 1 million masks by April 19, 2020 and the full order of 5 million masks by May 1, 2020 (NYSCEF Doc No. 19, ¶¶ 13-14). The City prepaid one-half, or \$7.575 million, of the Contract's full value on April 6, 2020 (*id.*, ¶ 19). Siege, though, failed to fully perform, delivering only 812,760 masks (*id.*, ¶ 20). On July 31, 2020, DCAS proposed terminating the Contract, with Siege refunding \$5,112,337.20, or the total cost of the masks Siege had failed to deliver, to plaintiffs, but Siege declined (*id.*, ¶ 21). DCAS terminated the Contract on October 1, 2020 (*id.*, ¶ 24; NYSCEF Doc No. 17, Ahlberg affirmation, exhibit B). Siege submitted a notice of dispute to DCAS challenging the default determination, which DCAS denied on November 27, 2020 (NYSCEF 19, ¶¶ 26-27). Siege then submitted a notice of claim to the Office of the City Comptroller, which was denied on March 24, 2021 (*id.*, ¶¶ 28-29). Siege also filed a petition with the Contract Dispute Resolution Board (CDRB) challenging DCAS's termination, which the CDRB denied in a written decision dated September 18, 2023 (NYSCEF Doc No. 18, Ahlberg affirmation, exhibit C). Siege has not brought a proceeding under article 78 of the CPLR challenging the CDRB's decision (NYSCEF Doc No. 19, ¶ 35).

Plaintiffs commenced this action on July 9, 2024 (NYSCEF Doc No. 1). The verified complaint pleads three causes of action for: (1) breach of contract; (2) an account stated; and (3) fraudulent transfer under Debtor and Creditor Law §§ 273, 274 and 275. Plaintiffs allege, upon information and belief, that defendant David Oskirko (Oskirko) substantially or entirely owns, operates, manages or controls Siege and defendant Canam Group (Canam Group), a limited liability company with a principal place of business in Elizabeth, Colorado (NYSCEF Doc No. 19, ¶¶ 4-5 and 64-65). Plaintiffs allege, upon information and belief, that less than two weeks after the CDRB issued its decision, Siege attempted to hide its assets by changing its registered name to Canam Group on September 27, 2023, and transferred its assets to Canam Group (*id.*, ¶¶ 67-

69). Plaintiffs further allege that “Siege International was aware that it would not be able to pay the amount it owes the City prior to initiating transfers of assets to Canam Group and/or Siege and/or David Oskirko,” citing a December 17, 2020 New York Times article “report[ing] that David Oskirko believed that refunding the City the money it had advanced for the masks Siege International never delivered would drive his company under” (*id.*, ¶¶ 70-71). It is further alleged, upon information and belief, that Siege is no longer in business and is insolvent (*id.*, ¶¶ 72-73).

Plaintiffs now move for entry of a default judgment against Siege. The motion is not opposed.

A motion for a default judgment must be supported with “proof of service of the summons and the complaint[,] ... proof of the facts constituting the claim, the default and the amount due” (CPLR 3215 [f]; *see also Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). The plaintiff must also offer “some proof of liability ... to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). A party in default “admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages” (*Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 [1984]).

According to an affirmation of service dated October 25, 2025, plaintiffs served Siege with process pursuant to Business Corporation Law § 307 (NYSCEF Doc No. 23, Ahlberg affirmation, exhibit H), which governs service of process upon unauthorized foreign corporations. The plaintiff must strictly comply with the statute (*Flick v Stewart-Warner Corp.*, 76 NY2d 50, 57 [1990], *rearg denied* 76 NY2d 846 [1990]), as the failure to strictly adhere to its requirements is a jurisdictional

defect that requires dismissal (*Reed v Gowanda Nursing Home*, 5 AD3d 987, 987 [4th Dept 2004], *affd* 4 NY3d 770 [2005]).

Plaintiffs have demonstrated their compliance with Business Corporation Law § 307. The affirmation of service establishes that plaintiffs submitted process to the Secretary of State electronically on September 26, 2024, as is permissible under Business Corporation Law § 307 (b), and mailed the summons, complaint, notice of electronic filing and notice of service under Business Corporation Law § 307 by registered mail, return receipt requested, under tracking no. RF408361394US, to Siege on September 26, 2024, at 200 Union Blvd, Suite 200, Lakewood, Colorado 80228, the address on file with the Colorado Secretary of State for Siege at the time of such mailing (NYSCEF Doc No. 23 at 1). Plaintiffs filed the affirmation, together with process and proof of delivery on October 7, 2024 obtained from the United States Postal Service, with the clerk on October 25, 2024 (NYSCEF Doc No. 15, Ahlberg affirmation, ¶ 11; NYSCEF Doc No. 7). Service was deemed complete 10 days later (Business Corporation Law § 307 [c] [2]), and plaintiffs have demonstrated that Siege has failed to answer or otherwise appear in this action.

Plaintiffs have also demonstrated the prima facie validity on their first cause of action for breach of contract (*see Charles Condominiums, LLC v Victor RPM First, LLC*, — AD3d —, 2025 NY Slip Op 03274, *1-2 [1st Dept 2025]). The elements for a breach of contract claim are the existence of a valid contract, the plaintiff's performance, the defendant's breach and damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). The complaint verified by DCAS's Agency Chief Contracting Officer establishes that plaintiffs paid Siege \$7.575 million of the Contract price, and that Siege breached the Contract by failing to deliver 5 million masks. Siege delivered only 812,760 masks, thereby damaging plaintiffs in the amount of \$5,112,337.20. Plaintiffs are entitled to prejudgment interest from May 1, 2020 (*see* CPLR 5001 [b]).

The court need not address the second and third causes of action for an account stated and under the Debtor and Creditor Law, respectively, as an award of damages against Siege on these causes of action would be duplicative of the damages awarded on the breach of contract cause of action (see *Vanpoy Corp. S.R.L. v Soleil Chartered Bank*, 204 AD3d 486, 487-488 [1st Dept 2022]; *Ervine v Laurence*, 2010 NY Slip Op 33109[U], *4-5 [Sup Ct, NY County 2010]).

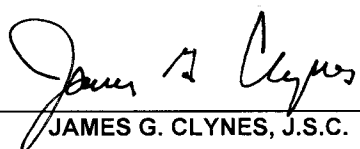
Accordingly, it is

ORDERED that the motion brought by plaintiffs The City of New York and The New York City Department of Citywide Administrative Services for entry of a default judgment against defendant Siege International is granted, without opposition; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiffs and against defendant Siege International in the sum of \$5,112,337.20, together with interest at the statutory rate from May 1, 2020, until the date of entry of judgment, and at the statutory rate thereafter, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.

7/30/2025
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE